

ID 0961  
4.29.85  
59

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
EPA REGION 10, 1200 SIXTH AVENUE  
SEATTLE, WASHINGTON 98101

IN THE MATTER OF:

ARRCOM, INCORPORATED,  
DREXLER ENTERPRISES, INC.  
et alia,

Respondents.

NOS. X83-04-01-3008P  
X83-04-02-3008

MOTION AND AGREED ORDER FOR  
SEVERANCE AND POSTPONEMENT  
OF HEARING ON THE MERITS RE  
RESPONDENT WARREN BINGHEAM

MOTION

The Complainant, with consent and concurrence by the Respondent Warren Bingham, moves for an Order pursuant to 40 CFR §§ 22.12(b) and 22.21(c), severing from this proceeding, the claims asserted against Warren Bingham, and postponing the hearing as to respondent Bingham until May 30, 1985. This motion is based upon an agreement in principle between EPA and respondent Warren Bingham for settlement which is detailed in this motion and Agreed Order, but which is not ready for culmination as an Order on Consent.

This motion does not affect any other party named in this proceeding, and notice hereof to them is unnecessary.

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1 Because an agreement in principle to settle has been  
2 reached between Complainant and Respondent Warren Bingham, good  
3 cause for severance and postponement is shown. Accordingly, this  
4 motion for severance and postponement as to respondent Warren  
5 Bingham should be granted.

6 Section 22.12(b) of the Consolidated Rules of Practice,  
7 40 CFR § 22.12(b), provides for the severance of any issues as to  
8 any party from a proceeding for good cause shown. Section 22.21(d)  
9 provides for the postponement of a hearing held under those rules,  
10 again for good cause shown. Good cause in this case for severance  
11 of Complainant's claim against Respondent Warren Bingham and post-  
12 ponement of the hearing as to him is shown by the following facts:

13 1. On April 26, 1985, Complainant and Respondent Warren  
14 Bingham agreed in principle to a consent agreement and order, which  
15 would resolve the above referenced action against Warren Bingham.  
16

17 2. The Order would set penalties at \$15,000.00 for Warren  
18 Bingham. The payment of those penalties would be deferred, and  
19 payment would be excused and remitted upon the occurrence of all  
20 of the following events:

21 A. Not later than 60 calendar days after the date of  
22 the Order, the Respondent Bingham will submit a written closure  
23 plan to EPA Region 10 for the hazardous waste management facility  
24 located five (5) miles south of Rathdrum, Idaho on Highway 53,  
25 (hereinafter "Rathdrum facility") pursuant to all applicable parts  
26 of 40 CFR Part 265.110 - 265.120, Subpart G (1984); or Respondent  
27 Bingham will submit evidence and documentation of good faith efforts  
28

1 to develop such a closure plan.  
2

3 B. If the Respondent Bingham does not submit a closure  
4 plan after 60 calendar days after the date of the Order, not later  
5 than 120 calendarr after the date of the Order, the Respondent  
6 Bingham shall submit a closure plan to EPA Region 10 for the  
7 Rathdrum facility pursuant to all applicable parts of 40 C.F.R.  
8 §§ 265.110 - 265.120, Subpart G (1984).  
9

10 C. EPA Region 10 will review the submitted closure  
11 plan pursuant to 40 C.F.R. § 265.112(d), and if it has no major  
12 objections thereto, will submit the same for public comment. In  
13 no event will EPA Region 10 will EPA Region 10 give final approval  
14 to a closure plan before eight (8) months after the date of the  
15 Order on Consent.  
16

17 D. After approval of the closure plan by EPA Region  
18 10, Respondent will complete its implementation not later than  
19 one hundred and eighty (180) calendar days after the date of the  
20 approval.  
21

22 E. Upon forming any agreement for the transfer of  
23 the property at the Rathdrum facility, Respondent Bingham procures  
24 the agreement of the prospective or immediate transferee to  
25 perform all decretal terms and provisions of the agreed final  
26 Order, as described in an attachment to the Order.  
27

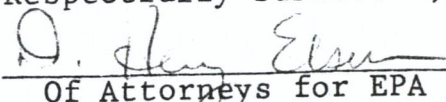
28 3. Any such agreed final Order for penalties, and any  
action taken to satisfy that Order or any conditions therein

1 (whether such action is the payment of penalties or the completion  
2 of the closure plan) shall not operate to relieve Respondent from  
3 any liability under the Resource Conservation and Recovery Act or  
4 the Comprehensive Environmental Response, Compensation, and  
5 Liability Act of 1980.

6 4. There are several details to such agreement yet to be  
7 negotiated and agreed upon before the Order can be signed by all  
8 parties. In addition, Respondent Warren Bingham resides in Cali-  
9 fornia, and is not able to read any tentative agreement reached be-  
10 tween attorneys before the hearing date. Accordingly, it is not  
11 possible for the signed consent Order to be filed before the  
12 hearing date set for April 30, 1985. As a result, it is neces-  
13 sary to sever Complainant's claims against Respondent Warren  
14 Bingham from other parties named in the Complaint and Compliance  
15 Order #X83-04-02-3008, and postpone any hearing date to May 30,  
16 1985 for Respondent Bingham. For all other parties designated in  
17 the Complaint, the hearing will be held as scheduled on April 30,  
18 1985.

19 In view of the agreement in principle reached between  
20 Respondent Warren Bingham as outlined above, which is in the best  
21 interests of all parties to the proposed agreement, Complainant  
22 and Respondent Warren Bingham submit that a severance and postpone-  
23 ment as to Warren Bingham is necessary and supported by good  
24 cause.

25 Respectfully submitted,

26   
27 Of Attorneys for EPA

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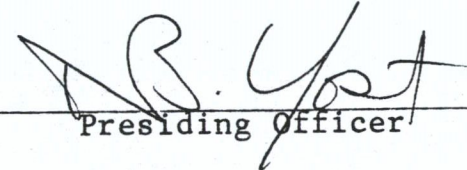
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ORDER

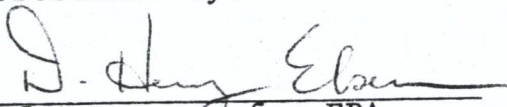
Upon the basis of the foregoing Motion and the consent of Complainant and Respondent Bingham affixed below by signature of their respective counsel, the claims of EPA against Respondent Bingham are hereby severed from all other claims in this proceeding, ~~and the Regional Hearing Clerk shall establish a new case caption and cause number for such severed claims,~~ and the hearing on the merits of such claims shall be, and is, postponed to May 30, 1985, to occur at Seattle, Washington, at EPA offices indicated hereinabove, with the hearing to commence at 9:30 A.M. PDT on that date.

IT IS SO ORDERED.

Date: 4/30/85

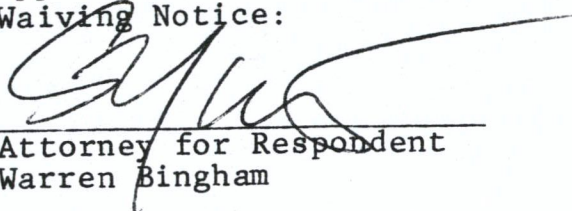
  
Presiding Officer

Presented by:

  
Of Attorneys for EPA

4/24/85

Stipulated, Agreed, and  
Approved for Entry  
Waiving Notice:

  
Attorney for Respondent  
Warren Bingham